Internal Revenue Service

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Department of the Treasury
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Person To Contact:
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Refer Reply To:
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Date:
September 18, 2017

LEGEND

Bankruptcy Court =

Bankruptcy Court Order =

Business =

Class 1 Shares =

Class 2 Shares =

Company =

Credit Bid =

Creditor =

Debt 1 =

Debt 1 Agreement =

Debt 2 =

Debt 3 =

Junior Creditors =

Letters of Credit =

Letters of Credit Debt =

LossCo =

Mere Change =

Non-5% Creditor =

Obligation 1 =

Obligation 2 =

Nominee =

Note 2 =

Note 3 =

Permits =

Surety Bonds =

Transaction =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

Dear :

This letter responds to your authorized representatives' letter dated March 20, 2017, requesting rulings under section 382 of the Internal Revenue Code (the "Code"). The relevant information provided in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

FACTS

LossCo, a publicly traded domestic corporation, was the parent of an affiliated group of corporations (the "LossCo Group") that filed a consolidated return for U.S. federal income tax purposes. Prior to Date 5, members of the LossCo Group operated Business, which required Permits. To obtain Permits, members of the LossCo Group were required to obtain and submit the Surety Bonds to provide financial assurance to secure the performance and satisfaction of Obligation 1. In addition, as part of the conduct of Business, members of LossCo Group incurred Obligation 2, and obtained Surety Bonds to provide financial assurance to secure the performance and satisfaction of Obligation 2. The issuers of the Surety Bonds required the relevant LossCo Group members to provide the Letters of Credit as security before issuing the Surety Bonds.

On Date 1 (a date more than 18 months prior to Date 3), LossCo entered into the Debt 1 Agreement with certain Creditors, and issued Debt 1 pursuant to the Debt 1 Agreement. A facility under the Debt 1 Agreement provided for the issuance of the Letters of Credit, and the Letters of Credit Debt was incurred under this facility.

On Date 2 (a date more than 18 months prior to Date 3), LossCo issued Debt 2 to certain Creditors. Subsequently, and less than 18 months prior to Date 3, LossCo issued Debt 3 to certain Creditors. Debt 3 was properly treated as part of the same issuance as Debt 2 under Treas. Reg. § 1.1275-2(k). Debt 2 and Debt 3 (collectively, the "Qualified Reopening Debt") were evidenced by Note 2 and Note 3, respectively. Note 2 and Note 3 were in the form of promissory notes made out for the aggregate

amount of the debt, were made payable to the order of Nominee or its assigns, and were identified with the same CUSIP number.

On Date 3, LossCo and members of the LossCo Group filed voluntary petitions for protection under Chapter 11, Title 11, United States Code. On Date 4, the Bankruptcy Court issued the Bankruptcy Court Order authorizing the Transaction. On Date 5, the Transaction was implemented, pursuant to which members of the LossCo Group transferred assets to Company (and to entities disregarded as separate from Company), the Creditors provided the Credit Bid, the Creditors received A of Company's Class 1 Shares, and the Junior Creditors received B (a *de minimis* amount) of Company's Class 1 Shares. Thereafter, on Date 6, the Bankruptcy Court entered an order converting the LossCo Group bankruptcy proceedings to cases under Chapter 7, Title 11, United States Code.

In the Transaction, in addition to the Class 1 Shares, Company distributed rights to the Creditors permitting them to purchase an aggregate of C of the Company's Class 2 Shares (the "Rights Offering"). In the Rights Offering, Creditors were provided with non-certificated rights to purchase a proportionate amount of an aggregate of C Class 2 Shares, and irrevocably commit to purchase a proportionate amount of up to an aggregate of D of the Company's Class 1 Shares, upon the Company's demand. The Rights Offering was allocated among the Creditors based on their relative holdings of the aggregate amount of Debt 1, Debt 2, Debt 3, and Letters of Credit Debt (collectively, the "Senior Debt"), and Creditors could choose to exercise all, some, or none of their respective rights. Certain Creditors (the "Backstop Parties") agreed to backstop the Rights Offering on a fully committed basis by agreeing to (i) exercise in full the rights they received in the Rights Offering, and (ii) allow the Company the option to require them to purchase additional Class 2 Shares (the "Backstop Shares") that were not otherwise purchased in the Rights Offering. Each Creditor agreeing to act as a Backstop Party committed to purchase its proportionate amount of the Backstop Shares, with the proportion based on the amount of Senior Debt held by the Creditor relative to the aggregate amount of Senior Debt held by the Backstop Parties. Creditors were the only persons that could act as a Backstop Party.

On Date 5, in the Rights Offering, Company issued E Class 2 Shares as part of the "initial" offering and F Class 2 Shares as Backstop Shares (collectively, the "Rights Offering Shares"). As of the close of Date 5 (the date of the Transaction, and thus the date of the ownership change), H of the Company's stock (by value) was owned by Non-5% Creditors, who constituted a public group within the meaning of Treas. Reg. § 1.382-2T(f)(13), and the remaining I of Company's stock (by value) was owned by persons who were not Non-5% Creditors.

Less than 18 months prior to Date 3, and prior to Date 5, draws under the Letters of Credit were made by the issuers of the Surety Bonds. Certain Creditors made payments to these issuers in response to these draws, thus giving rise to the Letters of

Credit Debt under the Debt 1 Agreement; Company issued J Class 1 Shares (being a portion of the A Class 1 Shares issued on Date 5) to these Creditors with respect to the Letters of Credit Debt.

REPRESENTATIONS

The taxpayer has made the following representations:

a) Prior to and at the time of the Transaction, LossCo was a loss corporation within the meaning of section 382(k)(1) and Treas. Reg. § 1.382-2(a)(1)(i), and the LossCo Group was a loss group within the meaning of Treas. Reg. § 1.1502-91(c)(1).

b) LossCo was under the jurisdiction of the Bankruptcy Court immediately prior to, and at the time of, the Transaction.

c) The Transaction qualified as one or more reorganizations within the meaning of section 368(a)(1)(G), in which the requirements of section 354(b)(1) were met.

d) Company succeeded to consolidated net operating loss carryovers of the LossCo Group as a result of the Transaction.

e) No election pursuant to Treas. Reg. § 1.382-9(i) was made to elect out of section 382(l)(5).

f) Obligation 1 and Obligation 2 arose in connection with the normal, usual, or customary conduct of Business within the meaning of Treas. Reg. § 1.382-9(d)(2)(iv).

g) None of the Senior Debt was beneficially owned by a Non-5% Creditor whose participation in formulating a plan of reorganization made it evident to Company that the Non-5% Creditor had not owned the indebtedness for a period of 18 months or more as of Date 3.

h) Taking all facts and circumstances into account, it is mathematically possible that the Non-5% Creditors held a sufficient amount of Debt 2 such that, in combination with the amount of Debt 1 and Letters of Credit Debt held by such Creditors, Non-5% Creditors received in the aggregate an amount of equity in Company that satisfied the 50% test in sections 382(l)(5)(A)(ii) and 382(l)(5)(E).

RULINGS

Based on the information provided and the representations set forth above, we rule as follows:

1) Company may treat the Qualified Reopening Debt owned by the Non-5% Creditors as having been owned by such Creditors since Date 2 for purposes of meeting the 18-month requirement of section 382(l)(5)(E)(i) and Treas. Reg. § 1.382-9(d)(2)(i)(A).

2) Company may treat the Rights Offering Shares acquired by Non-5% Creditors as having been acquired in full or partial satisfaction of qualified indebtedness under Treas. Reg. § 1.382-9(d)(1).

3) Company may treat the Letters of Credit Debt as having arisen in the ordinary course of the trade or business within the meaning of section 382(l)(5)(E)(ii) and Treas. Reg. § 1.382-9(d)(2)(iv).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transactions under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from the proposed transactions that is not specifically covered by the above rulings.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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Mark S. Jennings
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel (Corporate)